

11 UNITED STATES DISTRICT COURT
12 CENTRAL DISTRICT OF CALIFORNIA
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11 GLOBAL DÉCOR, INC. and THOMAS H. 12 WOLF	11 CASE NO. CV 11-2602-JST (FMOx)
13 Plaintiffs, 14 15 vs. 16 THE CINCINNATI INSURANCE 17 COMPANY, 18 Defendant.	13 ORDER GRANTING DEFENDANT'S 14 MOTION TO TRANSFER
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1 **I. INTRODUCTION**

2 Before the Court is Defendant and Counterclaimant The Cincinnati Insurance
3 Company's Motion to transfer the case to the Northern District of Illinois pursuant to 28
4 U.S.C. § 1404(a). (Def.'s Mot., Doc. 22.) Plaintiffs and Counter-defendants Global
5 Décor, Inc. and Thomas Wolf have filed an opposition (Pls.' Opp'n, Doc. 28), and
6 Defendant has filed a reply (Def.'s Reply, Doc. 31-1). The Court finds this matter
7 appropriate for decision without oral argument. Fed. R. Civ. P. 78(b); C.D. Cal. R. 7-15.
8 Accordingly, the hearing set for June 20, 2011, at 10:00 a.m. is vacated. Having
9 considered the parties' briefs, the Court GRANTS Defendant's Motion and transfers the
10 case to the United States District Court for the Northern District of Illinois.

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12 **II. BACKGROUND**

13 The following facts are taken from Plaintiffs' Complaint and the exhibits attached
14 thereto. Plaintiff Global Décor is an Illinois corporation, and Plaintiff Wolf is its President
15 and Chief Executive Officer. (Compl. ¶¶ 1-2.) Defendant is an Ohio corporation. (*Id.* ¶
16 3.) Defendant issued Plaintiffs an insurance policy and subsequent renewals providing
17 commercial general liability and commercial umbrella coverage for the period from
18 December 15, 2008, through December 15, 2011 (the "Policy"). (*Id.* ¶¶ 8-9.)

19 On March 31, 2010, Ted Merianos filed suit in the Central District of California
20 against Merry Chance Industries, Ltd. and Steven Kwan ("Merianos" action). (*Id.* ¶ 12.)
21 On February 3, 2011, Merry Chance filed a counterclaim against Merianos and Plaintiffs.
22 (*Id.* ¶ 21.) On February 16, 2011, Plaintiffs provided notice to Defendant of the Merry
23 Chance counterclaim and requested coverage under the Policy. (*Id.* ¶ 31, Exh. 6.) On
24 March 11, 2011, Defendant denied this request. (*Id.* ¶ 32, Exh. 7.) Two weeks later,
25 Plaintiffs filed this suit seeking declaratory relief that Defendant has a duty to defend
26 Plaintiffs against the Merry Chance counterclaim in the *Merianos* case. On May 9, 2011,
27 Defendant filed the instant Motion to transfer venue.

1 **III. LEGAL STANDARD**

2 “For the convenience of parties and witnesses, in the interest of justice, a district
3 court may transfer any civil action to any other district or division where it might have
4 been brought.” 28 U.S.C. § 1404(a). A district court has broad discretion in determining
5 whether to transfer venue. *See* 28 U.S.C. § 1404(b); *Jones v. GNC Franchising, Inc.*, 211
6 F. 3d 495, 498 (9th Cir. 2000). “This transfer power is, however, expressly limited by the
7 final clause of § 1404(a) restricting transfer to those federal districts in which the action
8 ‘might have been brought.’” *Van Dusen v. Barrack*, 376 U.S. 612, 616 (1964) (quoting 28
9 U.S.C. § 1404(a)). Thus, district courts utilize a two-step analysis to determine if venue is
10 proper. “The threshold question under Section 1404(a) requires the court to determine
11 whether the case could have been brought in the forum to which the transfer is sought.”
12 *Roling v. E*Trade Sec., LLC*, 756 F. Supp. 2d 1179, 1184 (N.D. Cal. 2010). “If venue
13 would be appropriate in the would-be transferee court, then the court must make an
14 ‘individualized, case-by-case consideration of convenience and fairness.’” *Id.* (quoting
15 *Jones*, 211 F.3d at 498). In *Jones*, the Ninth Circuit set forth ten permissive factors that a
16 court might consider: (1) the location where the relevant agreements were negotiated and
17 executed; (2) the state that is most familiar with the governing law; (3) the plaintiff’s
18 choice of forum; (4) the respective parties’ contacts with the forum; (5) the contacts
19 relating to the plaintiff’s cause of action in the chosen forum; (6) the differences in the
20 costs of litigation in the two forums; (7) the availability of compulsory process to compel
21 attendance of non-party witnesses; (8) the ease of access to sources of proof; (9) the
22 presence of a forum selection clause; and (10) the public policy of the forum state. *Jones*,
23 211 F.3d at 498-99.

24 In reviewing a motion to transfer venue, a court may consider facts outside of the
25 pleadings and the pleadings need not be accepted as true. *Cf. Murphy v. Schneider Nat’l,*
26 *Inc.*, 362 F.3d 1133, 1137 (9th Cir. 2004) (reviewing an analogous improper venue motion
27 pursuant to Federal Rule of Civil Procedure 12(b)(3)). The movant bears the burden of
28 persuasion to make a strong showing of inconvenience to warrant upsetting the plaintiff’s

1 choice of forum. *See Decker Coal Co. v. Commonwealth Edison Co.*, 805 F.2d 834, 843
2 (9th Cir. 1986).

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4 **IV. DISCUSSION**

5 **A. This Action Could Have Been Brought in the Northern District of Illinois**

6 The parties do not dispute that Plaintiffs could have brought this case in the
7 Northern District of Illinois. Because diversity of citizenship under 28 U.S.C. § 1332
8 provides the sole basis for jurisdiction, 28 U.S.C. § 1391(a) applies. *See* 28 U.S.C. §
9 1391(a). Under § 1391(a), a case may be heard in:

10 (1) a judicial district where any defendant resides, if all defendants
11 reside in the same State,

12 (2) a judicial district in which a substantial part of the events or
13 omissions giving rise to the claim occurred, or a substantial part of
14 property that is the subject of the action is situated, or

15 (3) a judicial district in which any defendant is subject to personal
16 jurisdiction at the time the action is commenced, if there is no district in
17 which the action may otherwise be brought.

18 28 U.S.C. § 1391(a). Defendant resides in Illinois, does business in the Northern District
19 of Illinois, and is therefore subject to personal jurisdiction in the Northern District of
20 Illinois. (Def.’s Mot. at 12.) Thus, this case can be heard in the Northern District of
21 Illinois.

22 **B. Interests of Convenience and Justice – Jones Factors**

23 Defendant argues that the balance of convenience supports a finding that the
24 convenience of the parties and the interest of justice would be better served in the Northern
25 District of Illinois. *See* 28 U.S.C. § 1404(a). The Court agrees.

26 *1) Location Where Relevant Agreements Were Negotiated and Executed*

27 Defendant issued Plaintiffs the original Policy in the Northern District of Illinois, as
28 the underwriter for Defendant who negotiated the Policy with Plaintiffs did so from the

1 Northern District of Illinois. (Monahan Decl., Doc. 24, ¶¶ 3, 15.) The underwriter for
2 Defendant who negotiated the renewals for the Policy did so from Ohio. (Wilson Decl.,
3 Doc. 25, ¶¶ 3, 11.) Nor do Plaintiffs dispute that they negotiated and accepted the Policy
4 and the renewals in the Northern District of Illinois. The Policy was therefore negotiated
5 and executed in the Northern District of Illinois. Thus, this factor weighs in favor of
6 transferring the case.

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8 2) *State Most Familiar with the Governing Law*

9 A diversity case should be litigated “in a forum that is at home with the law that
10 must govern the action[.]” *Decker*, 805 F.2d at 843. “To determine the applicable
11 substantive law, a federal court sitting in diversity applies the choice-of-law rules of the
12 forum.” *Narayan v. EGL, Inc.*, 616 F.3d 895, 898 (9th Cir. 2010). California’s choice of
13 law statute is California Civil Code section 1646.¹ Section 1646 states that “a contract is to
14 be interpreted according to the law and usage of the place where it is to be performed; or, if
15 it does not indicate a place of performance, according to the law and usage of the place
16 where it is made.” Cal. Civ. Code § 1646. A contract “‘indicates’ a place of performance
17 within the meaning of section 1646 if the intended place of performance can be gleaned
18 from the nature of the contract and its surrounding circumstances.” *Frontier Oil Corp. v.*

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20 ¹ California courts also have applied a “governmental interest” analysis in choice of law
21 questions. *CRD Recovery, Inc. v. Laxton*, 600 F.3d 1138, 1141-42 (9th Cir. 2010). The
22 governmental interest analysis, however, “does not supplant the legislative command of section
23 1646.” *Frontier Oil Corp. v. RLI Ins. Co.*, 63 Cal. Rptr. 3d 816, 830 (Cal. Ct. App. 2007).
24 Furthermore, “the choice-of-law rule in Civil Code section 1646 determines the law governing the
25 interpretation of a contract, notwithstanding the application of the governmental interest analysis
26 to other choice-of-law issues.” *Id.* at 835. As the court in *Frontier* held: “The California Supreme
27 Court has never applied the governmental interest analysis to determine the law governing the
interpretation of a contract and has never stated or suggested that section 1646 does not determine
the law governing the interpretation of a contract.” *Id.*; *cf. Columbia Cas. Co. v. Gordon
Trucking, Inc.*, 758 F. Supp. 2d 909, 915 (N.D. Cal. 2010) (“Where the contract contains no choice
of law provision *and the case does not present an issue of contract interpretation*, California
courts apply the governmental interest test to determine which state’s law should apply.”)
28 (emphasis added). Thus, the Court applies only section 1646.

1 *RLI Ins. Co.*, 63 Cal. Rptr. 3d 816, 827 (Cal. Ct. App. 2007) (“The intended place of
2 performance is a question of contract interpretation for the court to decide, except to the
3 extent the answer may depend on the credibility of extrinsic evidence.”).

4 The Policy does not contain a choice of law provision nor does it explicitly indicate
5 a place of performance. Defendant argues the “intended place of performance” for the
6 Policy was Illinois because the Policy “was issued in Illinois, through an Illinois insurance
7 agent, covering solely Illinois operations.” (Def.’s Mot. at 13.) Defendant further asserts
8 that the Policy “contains endorsements with Illinois-specific terms and conditions” and the
9 “premium paid by Global Décor to Cincinnati was based on these Illinois exposures and
10 the risks of loss associated with Illinois-based operations.” (*Id.*) Plaintiffs argue, however,
11 that California law applies because section 1646 mandates application of the law of the
12 state where the *defense* of an underlying lawsuit is to be performed. (Pls.’ Opp’n at 8.) In
13 addition, Plaintiffs claim that because the Policy’s “coverage territory” included the entire
14 country and other parts of the world, Defendant “had to expect the place of performance of
15 its defense duty was wherever Global [Décor] might get sued, certainly including as [sic]
16 California.” (*Id.* at 9.) Under either Plaintiffs’ or Defendant’s argument, Illinois law
17 applies.

18 Under Plaintiffs’ broad theory, i.e., that the intended place of performance is
19 wherever the underlying lawsuit actually arises, a specifically intended place of
20 performance would not exist. Pursuant to section 1646, if a policy does not indicate a
21 place of performance, the governing law is “where [the contract] is made.” Cal. Civ. Code
22 § 1646. Here, Plaintiffs do not dispute that they accepted and executed the terms of the
23 Policy in the Northern District of Illinois and, thus, that the Policy was “made” there. *See*
24 *Costco Wholesale Corp. v. Liberty Mut. Ins. Co.*, 472 F. Supp. 2d 1183, 1197 (S.D. Cal.
25 2007) (“A contract is ‘made’ in the place of acceptance.” (citing *ABF Capital Corp. v.*
26 *Grove Props. Co.*, 126 Cal. App. 4th 204, 222 (Cal. Ct. App. 2005))). Illinois law would
27 therefore apply.

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1 The Court, however, finds Defendant's position, and thus the holding in *Frontier*,
2 more instructive. The court in *Frontier* concluded that California was the intended place of
3 performance of a liability insurance policy issued in Texas based on three policy
4 endorsements relating specifically to plaintiff's oil and gas operations in Beverly Hills,
5 California. *Frontier*, 63 Cal. Rptr. 3d at 822, 836-37. Based on the three endorsements,
6 the court concluded that the parties anticipated a suit arising from plaintiff's operations in
7 California and that defendant insurer would be obligated to provide a defense in California
8 if the claims were covered under the policy in question. *Id.* at 837. Here, despite its broad
9 coverage territory, the Policy includes Illinois endorsements, entitled "Illinois Changes –
10 Known Injury or Damage," that modify both the commercial general liability and the
11 umbrella coverage. (See Doc. 1-1, at 40, 66.) As in *Frontier*, these endorsements "clearly
12 demonstrate that the parties intended the policy to provide coverage for" Plaintiffs
13 operations in Illinois. *Frontier*, 63 Cal. Rptr. 3d at 837. Thus, the Court concludes that the
14 intended place of performance of the Policy was Illinois and that Illinois law controls.
15 Because Illinois law applies, this factor weighs heavily in favor of transfer as a district
16 court in the Northern District of Illinois that regularly applies Illinois law will be much
17 more familiar with the applicable law than a district court in the Central District of
18 California.

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20 3) *Plaintiff's Choice of Forum*

21 "Although great weight is generally accorded plaintiff's choice of forum," *Lou v.*
22 *Belzberg*, 834 F.2d 730, 739 (9th Cir. 1987), "if the plaintiff does not reside in his chosen
23 forum, courts accord considerable less deference to his choice of forum." *Healey v.*
24 *Spencer*, No. CV 09-7596, 2010 WL 669220, at *1 (C.D. Cal. Feb. 22, 2010); *see Costco*,
25 472 F. Supp. 2d at 1191 ("plaintiff's choice of forum receives less deference because
26 California is not plaintiff's domicile"). Furthermore, "[i]f the operative facts have not
27 occurred within the forum and the forum has no interest in the parties or subject matter,
28 [plaintiff's] choice is entitled to only minimal consideration." *Lou*, 834 F.2d at 739. Here,

1 Plaintiffs reside in the Northern District of Illinois, not California. In addition, the
2 *Merianos* counterclaim, brought in the Central District of California against Plaintiffs by
3 parties not involved in this suit, serves as Plaintiffs' sole basis for filing this case in
4 California. An underlying breach of contract dispute filed in the Central District of
5 California, however, does not necessarily provide this Court with an interest in resolving a
6 separate duty to defend suit involving interpretation of a contract governed by Illinois law
7 and negotiated by parties located in Illinois and Ohio. Thus, Plaintiffs' choice of forum
8 receives little, if any, deference.

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10 4) *The Parties' Respective Contact with the Chosen Forum, and (5) Contacts*
11 *Relating to the Plaintiff's Cause of Action in the Chosen Forum*

12 These two factors weigh heavily in favor of transfer. Neither Plaintiffs nor
13 Defendant reside in the Central District of California, and Plaintiffs have not provided any
14 evidence that they have any relevant contact with the Central District of California.
15 Instead, Plaintiffs assert that this forum is proper because Defendant "is registered to do
16 business in California, . . . defends lawsuits in California and . . . sells insurance in
17 California." (Pls.' Opp'n at 3.) However, Plaintiffs do not give any explanation as to why
18 its claim should be heard in this forum, other than the fact that the *Merianos* counterclaim
19 was filed against Plaintiffs in the Central District of California. Although Defendant is a
20 global insurance company with contacts in California, such contacts have no relation to this
21 case as the Policy was negotiated and executed in Illinois. As mentioned above, Plaintiffs'
22 claim for declaratory relief is based on a Policy that was negotiated and executed by parties
23 in Illinois and Ohio and that is bound by Illinois law. In light of this fact, and because
24 Global Décor's headquarters are located in the Northern District of Illinois and Wolf is a
25 citizen of Illinois, the case should be heard in Illinois.

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1 6. *The Costs of Litigation in the Two Forums*

2 The costs of litigation and convenience of the potential witnesses favor transfer to
3 Illinois. Because the individuals who executed, negotiated, and accepted the Policy on
4 behalf of the parties are located in Illinois and Ohio and may serve as witnesses if
5 necessary, proceedings in the Northern District of Illinois would provide a more convenient
6 and cost-effective forum. *See Italian Colors Rest. v. Am. Express Co.*, No. C 03-3719,
7 2003 WL 22682482, at *5 (N.D. Cal. Nov. 10, 2003) (“Generally, litigation costs are
8 reduced when venue is located near most of the witnesses expected to testify or give
9 depositions.”); *Metz v. U.S. Life Ins. Co.*, 674 F. Supp. 2d 1141, 1147 (C.D. Cal. 2009)
10 (“The relative convenience to the witnesses is often recognized as the most important
11 factor to be considered in ruling on a motion under § 1404(a).” (quoting *Saleh v. Titan*
12 *Corp.*, 361 F. Supp. 2d 1152, 1160 (S.D. Cal. 2005))). Plaintiffs’ nakedly assert that
13 transfer would increase costs, cause delay, and result in a duplication of effort because the
14 *Merianos* suit is pending in this district. (Pls.’ Opp’n at 10.) Plaintiffs provide no
15 explanation, however, as to why transfer would result in any of these consequences. Thus,
16 this factor favors transfer.

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18 7. *Availability of Process to Compel Attendance of Non-Party Witnesses*

19 This factor is irrelevant as neither party has indicated that any non-party witnesses
20 are necessary in this case.

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22 8. *Ease of Access to Sources of Proof*

23 The “ease of access to documents does not weigh heavily in the transfer analysis,
24 given that advances in technology have made it easy for documents to be transferred to
25 different locations.” *Metz*, 674 F. Supp. 2d at 1149 (quoting *Szegedy v. Keystone Food*
26 *Prods., Inc.*, No. CV 08-5369, 2009 WL 2767683, at *6 (C.D. Cal. Aug. 26, 2009)). “That
27 notwithstanding, the possibility that documents can be produced electronically does not
28 alter the conclusion that the cost of litigation will likely be less if the case were venued in

1 the forum where the evidence is located.” *Patent Mgmt. Found., LLC v. Analog Devices, Inc.*, No. C 10-03630, 2011 WL 197831, at *4 (N.D. Cal. Jan. 20, 2011). Any relevant documents or evidence as to the Policy will be located in Illinois or Ohio, not California.
4 This factor therefore favors transfer.

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6 9. *Presence of a Forum Selection Clause*

7 This factor is irrelevant as the Policy does not contain a forum selection clause.

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9 10. *Public Policy of the Forum State*

10 Plaintiffs contend that California has a strong public policy interest in this dispute
11 because “all of the events potentially implicating insurance coverage in the underlying case
12 occurred and are occurring in California, not Illinois,” and “because it affects the California
13 federal court system.” (Pl.’s Opp’n at 11.) Plaintiffs continue to conflate the interests
14 involved in the underlying *Merianos* suit with the interests in this case. Although
15 California may have an interest in resolving the *Merianos* suit, that is of no moment here.
16 Again, this suit involves the interpretation of contract bound by Illinois law and entered
17 into by parties in Illinois and Ohio. California, therefore, does not have an interest in
18 resolving this suit.

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20 V. CONCLUSION

21 Accordingly, the Court GRANTS Defendant’s Motion to transfer venue and
22 TRANSFERS the case to the United States District Court for the Northern District of
23 Illinois.

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25 DATED: June 16, 2011

26 **JOSEPHINE STATON TUCKER**
27 JOSEPHINE STATON TUCKER
28 UNITED STATES DISTRICT JUDGE